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EXAMINATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Second periodic reports of States parties due in 1995

Addendum

# ALGERIA *

[11 March 1998]

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* For the initial report submitted by Algeria see document CCPR/C/62/Add.1; for its consideration by the Committee see CCPR/C/SR.1125, 1128 and 1129; CCPR/C/79/Add.1 and the Official Records of the General Assembly, Forty-seventh session, Supplement No. 40 (A/47/40), paras. 264-299.

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## Introduction

1. In renewing the historical perspective of social transformation, the revised Constitution of 28 November 1996 established the irreversible right of all citizens to freedom of association, to the creation and communication of ideas and to choose their representatives in the absolute triumph of the values of pluralism. This freedom of choice, as exercised by citizens under conditions of free competition in the election of the President on 16 November 1995, the elections to the legislature of 5 June 1997, the local elections of 23 October 1997 and the elections of 25 December for the Council of the Nation, is proof in the sphere of public life of the extraordinary increase in civil and political rights in Algeria; it is also proof of the bringing to a successful conclusion of the political transition that has led the country from a one-party system to a system of open pluralism in which the virtues of the alternation of political power and of open debate should be a never-ending stimulus to the opening up of new horizons for the creative acts of national public life.

2. It is acknowledged that upheavals during the general transition begun in 1989, especially terrorist activity under the guise of the hallowed values of the Algerian people, may be restricting factors, but ones that should not in any sense weigh down the general aspiration of the Algerian people for progress and an improved standard of living, for solidarity and social justice, which may summed up as the search for vigorous dynamic drives to place the collective destiny in the strong positive alignments of universal destiny.

3. This periodic report of Algeria, the second since 1991, assesses the progress made by our country and examines the successive alignments that have been features of the political and economic transition and of the general plan for dealing with the crisis that led to the National Conference of 1994 and restoration of the electoral process. Thus, the increase in rights places the Algerian citizen of 1998 in a different relationship to the State, one steeped in critical appreciation and the constant search for and achievement of new rights, but also one made fruitful by original examples of mediation for better curbs on discretionary power and to prevent any attempt at totalitarianism. The report is in two parts: the first provides some general information, while the second supplements that information with an analysis of those elements that have a bearing on the articles of the International Covenant on Civil and Political Rights.

4. Algeria ratified the Covenant on Civil and Political Rights on 12 December 1989. On 5 April 1991 it submitted its initial report (CCPR/C/62/Add.1) to the Human Rights Committee, which considered it at its Forty-fourth session, during its 1125th, 1128th and 1129th meetings on 25 and 27 March 1992 (CCPR/C/SR.1125, SR.1128 and SR.1129). On presentation of the report, the Algerian delegation gave an account of the programme of reforms launched after the adoption of the new Constitution of 23 February 1989 for the setting up of new institutions based on political pluralism, separation of powers, independence of the judiciary and freedom of expression. At the international level, the Algerian authorities have sought to speed up the process of accession to those international human rights instruments to which Algeria was not already party (rights of the child and elimination of all forms of discrimination against women).

5. Since the presentation of the initial report, the Algerian authorities have continued in their endeavours to consolidate the rule of law, pluralistic democracy and the advancement and protection of human rights. A new Constitution has been adopted, new machinery has been put in place for the advancement of human rights, and some aspects of legislation have been brought into line with the new situation. Lastly, encouragement has been given to associations, as provided by the Constitution.

## I. GENERAL INFORMATION

### A. Generalities

6. In 1988 Algeria initiated transition to a pluralistic democracy and a market economy. In so doing it was responding to a desire of the people following their experience of a single party, which had turned out to be poorly suited to making effective allowance for different political sympathies and ideological trends. Free elections and private initiative were intended, in particular, to be driving forces in the evolution of Algerian society. There were some complications in the course of this difficult transition, partly because of the state of the Algerian economy and the unfavourable international economic situation, partly because of upheavals in the international political scene, prominent among which were the consequences of the war in Afghanistan. Using a fallacious religious approach as a cover, some forces attempted to exploit the social and economic difficulties of people on the margins of society to oppose the democratic process by means that included recourse to terror and crime. The authorities found themselves faced with a new situation that threatened the safety and property of citizens and the institutions of the State itself.

7. The Algerian authorities found themselves obliged in February 1992 to invoke the constitutional provisions for the inauguration of a state of emergency. The martial law proclaimed did not relieve the State of its obligations regarding guarantees for the exercise of the fundamental freedoms of the citizen provided by the Constitution and by the various human rights treaties and agreements ratified by Algeria. It was to confront this new situation that the Algerian authorities decided to declare a state of emergency in February 1992. Although the state of emergency did impose some restrictions on the exercise of public rights and freedoms, it did not relieve the State of its obligations to guarantee the right to exercise fundamental civil rights contained in the existing internal constitutional system and in the international agreements ratified by Algeria.

8. At the same time, the authorities have conducted an anti-terrorist campaign within the framework of national law and in accordance with Algeria's international undertakings. Such a campaign has been found to be essential in order to proceed with the undertaking of consolidating the State subject to the rule of law and to pursue the process of legitimizing institutions by a return to universal suffrage with the requisite guarantees of impartiality and transparency. Similarly, the campaign for the preservation of public order and the defence of individuals and property threatened by terrorism has always been conducted within the law and with respect for the undertakings that stem from various international instruments. The purpose of this campaign is to strengthen the State subject to the rule of law and to bring together the

conditions for the legitimization of institutions through return to really free, multi-party and democratic universal suffrage; that campaign has always been pursued in a spirit of dialogue and transparency.

9. Despite being involved in a lengthy period of transition (1992-1994) imposed by events, the Algerian authorities have consistently worked on the overhauling of the legislation in order to ensure the triumph of pluralistic democracy with respect for the component parts of the Algerian personality and to provide the conditions for a real national consensus before the restoration of the electoral process. The switch from the one-party system to pluralism led the National Assembly to produce all the laws called for subsequent to the rights created by the Constitution of 23 February 1989. Thus it was that an Act of 1989 on associations of a political nature encouraged the emergence of parties that had begun to appear on the political scene; an institutional act on parties was adopted in 1994. Furthermore, social and cultural associations were encouraged by the amendment in 1990 of the Act of 1988 that allowed associations to operate within their respective areas of competence. As an illustration of freedom of expression, the law on information adopted in 1990 encouraged the emergence of independent private organs of the press and also of organs taking a partisan stand.

10. That is why, following a dialogue initiated by the Head of State with the Algerian political class and with civilian society in general, a "programme supporting national consensus" was drafted and adopted in January 1994 by the Government and most political parties. That platform provided the basis for the setting up of transitional courts, which resulted in consolidation of the State subject to the rule of law and pluralistic democracy as an irreversible choice. Most of the warning and monitoring systems concerning human rights have now been put in place; these arrangements, which cover fundamental rights of the individual and social, cultural and economic rights, rest on four major categories of machinery that act concomitantly.

1. Political machinery

11. This machinery exists at the three levels universally recognized in any institutional system: executive, legislative and judicial. Beginning in 1994, on the occasion of the opening ceremony of the judicial year, the country's chief magistrate, the Head of State, clearly identified the protection of individual and collective freedoms and respect for human rights as permanent priority aims of government action. While stressing the independence of the judiciary, he asked judges to "seize upon every instance of the exceeding of powers and to deal with it with all the strictness of the law". Moreover, with the aim of strengthening the part played by the National Human Rights Observatory and to enable it to carry out its work under the best possible conditions, the Head of State sent a directive on 16 January 1996 to all State bodies concerned asking them to assist the Observatory in carrying out its task of watching over and promoting respect for fundamental human rights and freedoms.

12. In his capacity as the leader of the executive responsible to the Parliament, the Head of the Government has reasserted the context in which the use of law-enforcement agencies may be envisaged. Thus, in June 1994, he stated that "the use of force is authorized only in so far as it is reasonably regarded

as being necessary to prevent a crime being committed or legally to arrest offenders or suspects".

13. Moreover, the authorities regard the political parties as one element in the machinery for monitoring the protection of human rights. The Act of 8 July 1989 on political parties states that party constitutions and programmes shall expressly include the guaranteeing of human rights and fundamental freedoms: "any political association shall, through its objectives, help to [...] protect the republican form of government and the fundamental freedoms of the citizen and respect democratic organization" (art. 3); "political associations are not allowed to engage in any violation [...] of the rights and freedoms of others" (art. 6); "a political association shall be organized on the basis of democratic principles" (art. 10).

14. Despite the constitutional and legal framework put in position in order to guarantee authentic pluralistic democracy, some parties and political figures have used the cause of human rights to serve purely partisan ends. That was the case of the Islamic Salvation Front (FIS), which has been dissolved. This party which, on the one hand, bolstered its speeches with misrepresented references drawn from the various treaties and agreements on human rights, did not hesitate, on the other hand, to "justify" and "legitimize" systematic attack on the most fundamental human rights, especially the right to life and the right to freedom of conscience. It placed itself outside the legal framework by establishing armed groups of vigilantes and "vice squads". The first of these attacks date back to 1989 and it was following the dissolution of the FIS that the vigilantes became armed groups.

15. Thus it is that the Algerian people has been the constant target of terrorist attacks conducted by this party. The terrorist groups, which initially acted in the wake of the FIS, subsequently degenerated into a kind of Mafia whose barbaric acts have no aim other than to burn, injure and kill, and to ruin the Algerian people, whom they regard as guilty for not having supported the reactionary model of society that they advocate. These groups have been able to continue their activities because they have found, both in Algeria and abroad, prominent people, non-governmental organizations and even governments that, for reasons too shameful to mention, are still trying to provide a political foundation for the terrorist activity of these groups and, in a way, to legitimize their crimes. Some people, for example, have described these criminals as "armed opposition groups" and have advocated dialogue with them, and in so doing have repudiated the spirit of the Vienna Declaration and the relevant UN resolutions. Such an attitude, which is comparable to an obvious form of complicity, constitutes a real threat to democracy both in Algeria and everywhere else. The terrorist phenomenon, which is a genuine threat to international peace and security and a real danger for the democracies, and which involves flagrant violations of human rights and fundamental freedoms, must be approached by the international community in a spirit of solidarity and effective co-operation for its eradication.

16. Algeria has acceded to almost all the international agreements on human rights; the international undertakings thus entered into take precedence over national law. In a decision dated 20 August 1989 the Constitutional Council reaffirmed the constitutional principle of the primacy of duly ratified treaties over domestic laws; that decision states "... after its ratification and

following its publication, any agreement forms an integral part of national law and, pursuant to article 123 of the Constitution, acquires a higher status than domestic laws, permitting any Algerian citizen to avail himself of its provisions in the courts". Consequently, private citizens may avail themselves of the protective machinery put in place by the Human Rights Committee or by the Committee against Torture once the domestic remedies provided have been exhausted.

17. The Algerian authorities, the National Human Rights Observatory, associations, the media and the universities are combining their efforts to spread knowledge of the principles concerning human rights and the various existing remedies amongst various strata of the population and officials. Thus, all treaties and agreements concerning human rights have been published in the official gazette, officers of the security forces have been given awareness programmes, and demonstrations aimed at achieving better knowledge of human rights and fundamental freedoms are regularly organized. In addition, a UNESCO chair for the teaching of human rights has been established in the University of Oran.

2. Machinery concerning associations and trade unions

18. The Algerian Constitution gives prominence to freedom of association for the defence of human rights. Article 32 guarantees the individual and collective defence of these rights and article 41 defines the area of application: freedom of expression, association and assembly. Freedom of association is extended to the political field, but also finds expression in the field of the protection of certain categories of rights, the rights of women, children, the sick, the disabled, consumers and users of public services. Associations enjoy various grants and facilities as stipulated by the relevant national legislation. Associations now have constitutions, a basis and activity that enables them to take their place on the international scene. Those associations that are concerned with promoting the rights of women, education and the campaign for the eradication of illiteracy are especially active.

19. In the matter of trade union freedom, as regards the demand for guarantees for the right to strike and to engage in collective bargaining, that principle has not merely been reaffirmed in the Constitution, but has been given organizational expression under the Act of 21 December 1991. The Act recognizes the right of wage earners in the private and public sectors to form independent trade union organizations separate from political parties. The number of annually recorded collective disputes, arbitrations and industrial disputes since that time is evidence of the vitality of the machinery for the promotion of the material and moral rights of the various categories of professions and of some categories of workers. In that context, should collective bargaining fail, there is a legal right to strike that is constitutionally protected when exercised within the law. It is common practice for this right to be exercised and it is applied in all areas of activity, including the public service and State structures. The number of strike movements has been on the decline since 1991: 2290 in 1989, 2023 in 1990, 1034 in 1991, 493 in 1992, 537 in 1993, 410 in 1994, 432 in 1995 and 441 in 1996. This trend has been accompanied by a decline in the numbers of strikers (on average 54.78% of the workforce of the sectors affected in 1995), in the number of sectors and in the resulting losses.

3. Legal machinery

20. The Algerian State has established the legal machinery needed to guarantee civil rights with regard to police custody, arbitrary or unreasonable arrest, allegations of ill-treatment, suspicious deaths, and guarantees for fair trial and the rights of the defence. In that respect and so as to put an end to terrorist criminal activity the Algerian State, following the example of many other countries, has provided itself with a legal framework that enables it to respond at the judicial level to this new form of criminal activity (see chapter II, paras. 97-105 concerning article 4).

21. The law on the struggle against subversion and terrorism that was in force from September 1992 to January 1995, which was a special law aimed at dealing with a form of criminal activity unknown in Algerian society, filled the gap in the law on that matter. The aim of the law was not to eliminate the essential stages of the legal process for which there was provision in the legislation in force. Preliminary police investigation, judicial enquiry, judgement, appeals and due process, all of which are parts of legal procedure under general law, were applied to what was termed the special procedure. Lastly, and above all, terrorist criminal activity was judged within the framework of the law by civil courts.

4. Freedom of the press

22. The right to information and the freedom of the press are regarded by the law as part of the essential machinery for the monitoring and protection of the rights of the individual. In that respect, the remarkable development of the press in Algeria has made it a real lever in collective protection of the rights of the individual. There are at the present time 25 daily papers, of which 11 are in Arabic and 14 in French. While eight of these papers are in the official public sector, the other seventeen belong to the private sector and partisan interests. There are 43 weekly papers (23 in Arabic and 20 in French) with an average total circulation of 1.4 million copies a week. Lastly, there are another 20 periodicals appearing fortnightly or monthly, with an average total circulation of 300,000 copies. The number of publications on sale has reached 150; market forces have led to the disappearance of many of them. Readership is estimated at 9 million every week.

5. Other machinery for the defence and advancement of human rights

23. Thanks to the adoption of the 1989 Constitution and the accession of Algeria to the main legal instruments on human rights, the post of Minister of Human Rights was created in June 1991. Aware of the difficulty of reconciling the defence of human rights with governmental responsibility, Algeria subsequently decided, in line with the relevant resolutions of the General Assembly and following the example of other countries, to replace this governmental office by a national body called the National Human Rights Observatory" (created by Decree No. 92-72 of 22 February 1992).

24. As a non-governmental public body consisting in equal numbers of elected and appointed members, under the aegis of the President of the Republic and with administrative and financial autonomy, the National Human Rights Observatory is

a mouthpiece for the promotion of all human rights and the monitoring of respect for them. Under its terms of reference it is entitled:

(a) To promote human rights in accordance with the principles set out in the Universal Declaration of Human Rights;

(b) To monitor and evaluate application of the provisions on human rights contained in the international agreements ratified by Algeria and the provisions of the Algerian Constitution, Acts and Regulations;

(c) To take action whenever infringements of human rights are reported or brought to its notice;

(d) To produce an annual report on the state of human rights in the country and submit it to the President of the Republic.

25. The National Human Rights Observatory is working to increase awareness of the universally accepted human rights and to publicize them. In that respect, it publishes a quarterly review of human rights, a press review and an internal information bulletin on its activities. Furthermore, it is increasingly acting as a mediator between the authorities and private individuals so as to avoid the possibility of all disputes giving rise systematically to legal actions.

26. The second of the mechanisms for the protection of individual rights organized by the authorities is the office of Ombudsman of the Republic, whose role is to "contribute to the protection of civil rights and freedoms and to the smooth functioning of public institutions and administrations". This appeal authority, created in March 1996 (Decree No. 96.113), may be approached by any individual who, although having exhausted all remedies, considers himself to have been wronged by the malfunctioning of a public service. The Ombudsman is then authorized to "make any recommendation or proposal to the department concerned that is likely to improve or regularize the operation of the service in question", which is then "required to give replies to all the questions raised". When no satisfactory reply is received, the Ombudsman may refer the issue to the President of the Republic.

27. Algeria, which has carried through a process of transition in an adverse setting, has built upon real and irreversible democratic advances. The Presidential elections of 16 November 1995, which were the first democratic contest between several candidates and political programmes since independence, were followed on 5 June 1997 by elections to the legislature, then on 23 October 1997 by local elections, and on 25 December 1997 by elections for the establishment of the Council of the Nation, the second chamber of the parliament, the finishing touch to the institutional edifice.

## B. Additional replies

28. When the initial report of Algeria was considered by the Human Rights Committee in March 1992, a number of clarifications were requested by the Committee. The following points are additional to the verbal replies given at the time.

1. What remedies are available should an infringement of the Covenant not be an offence in Algerian law?

29. The Constitutional Council has clearly reaffirmed the constitutional principle of the primacy of ratified international treaties over domestic law. By virtue of that fact, any person who so wishes may avail himself of this principle before the courts (see, in particular, paragraph 16 above).

2. What steps have been taken to make known the Covenant and its provisions? Have any publicity campaigns or educational syllabuses been launched?

30. In accordance with the universal practice of publicizing accession to international agreements, a broad public debate was initiated, mainly in the press and the audio-visual media, to make known the Covenant on Civil and Political Rights, at the same time as the National Assembly was considering and adopting it. In addition, on the official level, the chronicle of the debates of the National People's Assembly recounted the speeches made by deputies and the official gazette of the Republic of Algeria published the full text of the Covenant in its issue No. 11 of 26 February 1997.

31. Regarding the distribution and publicizing of the contents of the Covenant, that may be illustrated by reference to the following two approaches:

(a) During meetings. seminars and colloquia with panels of experts organized on the annual celebration of Human Rights Day pride of place has been given to the Covenant in the analysis and explanation of the various international instruments on human rights;

(b) The Covenant is a central topic in the syllabuses of the country's legal faculties and in the training course of the National Institute of the Legal Service.

32. The information given above is not exhaustive. Mention should also be made of the UNESCO Human Rights Chair established in 1995 in the University of Oran, the remit of which is to organize and promote an integrated system of human rights research, teaching and documentation. The tuition on human rights being provided by this chair leads to a master's degree or a doctorate.

33. The Algerian national monitoring body on human rights, for its part, engages in publicity targeted on the various strata of Algerian society; its features are training course and seminars, exhibitions and one-day study courses organized in contact with various organizations.

34. Lastly, it should be noted that Algeria reaffirmed its unconditional support for and availability to contribute financially to education on human rights in a letter from the President of the Republic to the High Commissioner for Human Rights on the occasion of the United Nations Decade for Human Rights Education.

3. How does the Government use the procedure for notification of the state of emergency proclaimed in February 1992? What rights were suspended during the state of emergency and on what legal basis?

35. Proclamation of the state of emergency was based on the provisions of article 86 of the Constitution. The Algerian Government notified the Secretary-General of the United Nations of this proclamation on 13 February 1992 in accordance with article 4, paragraph 3 of the Covenant. No restriction or suspension was applied to exercise of the rights referred to in paragraph 2 of the said article. The proclamation specifies that "establishment of the state of emergency, which is essentially aimed at the restoration of public order, maintaining personal safety and protecting property, and ensuring the proper functioning of institutions and public services, does not interrupt the democratic process being followed, just as the exercise of fundamental rights and freedoms continues to be guaranteed".

36. The provisional derogations taken in relation to the provisions of the Covenant are effectively limited:

(a) Article 9, paragraph 3: measures for holding individuals in the detention centres set up by the Ministry of the Interior were ordered and governed by regulations. They applied to "adults whose activity threatens public order and the safety of persons and property or interferes with the proper functioning of the public services". These measures were lifted in September 1993;

(b) Article 12, paragraph 1: spatial, temporal and personal restrictions were applied in 10 of the country's 48 wilayates (prefectures): these restrictions were lifted in February 1996;

(c) Article 17: the practice of making searches was invoked by administrative decision in some exceptional cases;

(d) Article 21: exercise of the right of assembly was made conditional on obtaining prior permission from the Ministry of the Interior.

The development of the situation since 1992 will be examined in chapter II of this report.

4. How was the attempt by "anti-democratic forces" that wished to use the democratic process to achieve power viewed by the Algerian authorities in the context of article 5 of the Covenant?

37. In the global context of the question raised, Algeria used all the resources of constitutional law as then established, without creating any exceptional judicial doctrine.

38. Thus, the resignation of the President of the Republic in January 1991, which occurred after the dissolution of the National Assembly, created a vacancy that led the Constitutional Council, by its declaration of 11 January 1992, to enrich constitutional doctrine by designating the "institutions invested with constitutional powers specified in articles 24, 75, 79, 129, 130 and 153 of the

Constitution" to "watch over the continuation of the State and to satisfy the conditions required for the normal functioning of institutions and constitutional order".

39. Subsequently, the High Council of Security, regarded by the Constitutional Council as the "institution entrusted with watching over the continuation of the State", in accordance with articles 24, 86 and 87 of the Constitution, stated "that it was impossible to carry on with the electoral process until the conditions required for the normal functioning of institutions were satisfied".

40. The entire electoral process (Presidential elections, elections to the legislature, local elections and elections to the Council of the Nation) was carried out in accordance with the provisions of the Constitution and subsequent Acts in the years 1995, 1996 and 1997, in a setting of absolute normality and, in some instances (the Presidential elections and elections to the legislature), under international scrutiny.

5. How can the prohibition of discrimination against women be reconciled with the traditional values and patriarchal culture of Algeria?

41. Just as in some societies in the Arabic and Moslem sphere, the legal status of women in Algeria may exhibit dichotomous aspects. Thus, the constitutional principle of the equality of the sexes is scrupulously respected with regard to civil and political rights. That principle makes women full citizens. Where matters of personal status are concerned, they are governed by the Family Code promulgated in 1984, which draws its inspiration largely from the Sharia; given certain contradictions that they bring out, there is some need for amendment.

42. Consequently, it may be noted that there is no legal provision either in civil law or in penal law that discriminates between women and men in Algeria. Women have legal personality in the same way as men. They avail themselves freely of that capacity in accordance with article 40 of the Civil Code, which states that "all adults in possession of their mental faculties and not having been deprived of legal capacity are fully capable of exercising their civil rights". Women have the right to acquire, administer, enjoy and dispose of any goods and the right to enter into contracts and to engage in trade. Married women retain the same rights, and their personal possessions and the proceeds of their work continue to be freely at their disposal. No provision in penal law discriminates against women by comparison with men.

43. Nevertheless, as regards personal status, the Family Code does contain some provisions that are widely objected to by campaigning associations; for example:

(a) Continued legal recognition of polygamy (Art. 8: "It is permissible to enter into a contract of marriage with more than one wife"). It should however be noted that the conditions imposed by the Sharia are so draconian that Algerian traditions have the effect that polygamy is far from common in Algerian society;

(b) The formal nature of the consent of a daughter to her first marriage (Art. 11: For a woman the task of arranging marriage falls to her matrimonial guardian who shall be either her father or one of her close relatives. The judge shall be the matrimonial guardian of a women who has no such relative. Art. 12: the father may oppose the marriage of his daughter "*bikr*" (young "virgin") if so doing is in her interest);

(c) The dowry - a unilateral gift made to the future wife when the marriage contract is signed - is regarded as a part of the marriage by the Family Code (Art. 33: "A marriage contracted without a dowry is declared void"). Given that this is a practice agreed by common accord and religiously motivated, feminist movements in Algeria do not question its principle, nor do they use it as an example of discrimination against women, but they do ask for its amount to be legally set at a symbolic level.

44. The real effect of these evident contradictions must not be understated or overstated. They must be seen in the light of another element of fundamental importance that concerns the place and role of Moslem law in the development of law and judicial doctrine in Algeria. That place and that role may be looked upon not only as extremely limited, but also as being continuously on the decline, by virtue of the sophisticated nature of the problems that currently arise and the secularization under way in Algerian society. The Family Code has been the only legal document to refer to the Sharia since the independence of Algeria. However, careful consideration should be given to the fact that, by virtue of its form and some of the judgements established, there may be a discernible attempt to restrict its place.

45. The development of Algerian society and the efforts of the authorities for greater emancipation of women will certainly make it possible to progress towards greater things. The authorities have the real aim of advancing beyond patriarchal practices, but it is one that requires prudence and perseverance. Abrupt enactment of legal rules that are inapplicable because too blatantly at odds with everyday social norms leads to disaffection with the law and confrontational distrust between legislator and citizen, and even to refusal to respect the authorities on grounds of the primacy of divine law. The importance of the problem constituted by this aspect should not be minimized; it truly requires a reinterpretation of the role of religion in society, which is something that can be done only with patience, over a period and as the general cultural level rises. That is why the Algerian Government intends to introduce the elements of non-discrimination and equality between the sexes gradually and without any retreat regarding personal status. The justice and wisdom of this approach rest on the legal rights already irreversibly established for the cause of feminism, notably as regards the right to work.

6. Do aliens who marry Algerian citizens have the right to pass on their nationality to their children?

46. The Nationality Code does provide any obstacle in that respect. It should be recalled that the legitimate child of an Algerian father and an Algerian mother is Algerian by right and cannot lose its Algerian nationality other than through the exercise of its own free will (article 18 of the order of 15 December 1970 on the Nationality Code). A child born on Algerian soil of an Algerian mother and a father who is unknown or stateless is Algerian (art. 6)

and retains the possibility of renouncing Algerian citizenship between the age of 18 and 21 years (art. 17). The legislator has consistently pursued the aim of ensuring that the child shall have a nationality.

7. What offences carry the death penalty?

47. This penalty is provided in extreme circumstances and there is provision for it to be commuted to other penalties or to damages. Application of the death penalty is in line with the "safeguards guaranteeing protection of the rights of those facing the death penalty" adopted by the Economic and Social Council of the United Nations in its resolution 1984/50. Thus:

(a) The death penalty, following the example of other penal sanctions, may be imposed only for the most serious crimes with lethal or extremely grave consequences;

(b) Capital punishment may be imposed only for a crime for which the death penalty is prescribed by law at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;

(c) The death penalty may not be imposed on an 18-year old minor;

(d) The death penalty may not be carried out on a woman who is pregnant or rearing a child less than 24 months old, nor on a condemned person who is seriously ill or has become insane;

(e) The death penalty may be carried out only pursuant to a final judgement and after all remedies have been exhausted (application to set aside, appeal against the sentence, appeal on points of law) and after rejection of the appeal for clemency that is the prerogative of the Head of State. Article 499 of the Code of Criminal Procedure lays down that during the time allowed for appeals on points of law and, should there have been an appeal, until such time as the judgement of the Supreme Court has been handed down, there shall be a stay of execution, except in respect of judgements in civil proceedings;

(f) Anyone sentenced to death, whatever the crime, shall have the right to seek pardon, or commutation of sentence;

(g) Where the death penalty is applied, it shall be carried out so as to inflict the minimum physical suffering.

48. The death penalty may be imposed for: (a) a terrorist act, as defined by article 87 bis of the Act of 25 February 1995 amending and supplementing the order of 8 June 1966 on the Penal Code; (b) treason, espionage or sabotage of civil or military installations (arts. 61-64), (c) attack on the authority of the State and the integrity of the national territory (art. 77), (d) crime through massacre and devastation; (e) premeditated murder, murder after lying in wait and recidivist murder (arts. 255/263); (f) assassination, parricide or poisoning (art. 261) and (g) voluntary destruction of installations when so doing occasions the death of an individual (art. 406).

49. With regard to other categories of crime, and in the context of the struggle against terrorism, 198 death sentences were passed after the hearing of both parties between October 1992 and October 1994: 22 of those condemned have been executed. No sentence of death has been carried out in Algeria since September 1993. Death sentences have been passed in the absence of the accused, but it should be noted that Algerian legislation provides that a sentence in the absence of the accused shall not be regarded as definitive. An individual sentenced in absentia who gives himself up or is arrested may apply for the sentence to be set aside. The admissibility of the application is then automatic and sets aside the death sentence; the accused is then retried (article 326 of the Code of Criminal Procedure).

50. Exercise of the Presidential pardon is based on the provisions of the Constitution (art. 74, paras. 6 and 8 and art. 147). The petition for mercy is a prerogative open to the condemned person after the legal proceedings have been exhausted. It is presented on the basis of a request made by the condemned person, directly through the prison governor, who routes it through the channels of the Ministry of Justice, or indirectly through the defence counsel, who files the petition for mercy with the registry of the court that tried the case. The Head of State may also grant collective commutations of sentences on various occasions, especially at the time of national or religious holidays. In either case, the commuted death sentence may not be less than a life sentence, with a minimum term of imprisonment in cases of terrorism. No minor below 18 years of age has been sentenced to death and no woman has been executed since Algeria became independent in 1962.

### 8. Legislation and regulations governing the use of force by officers of the law during peaceful demonstrations

51. The use of police law enforcement agencies may be required either by the administrative authorities when public order is disturbed, or by the judicial authorities when a court order has to be enforced. It is carried out in conformity with the "Code of Conduct for Law Enforcement Officers" (General Assembly resolution 34-169 of 17 December 1979) and it is subject, in addition, to the provisions of the Penal Code which provides aggravated penalties for the punishment of assaults causing bodily harm and infringement of personal freedom when committed by law and order officers.

### 9. Progress in the reduction of infant mortality

52. National targets are set by the Government and set out in a number of action plans and programmes drawn up with the assistance of UNICEF. The most important of them are the operational plan on infant survival, development and protection, the basic agreement on the targets to be achieved during the decade of the 1990s, and the plans of the action programme, which are annual plans setting out selective targets to be achieved. With regard to child health, an Infant Mortality Control Programme was adopted for the period 1991-95. It includes various lines of approach: maternal and neonatal health, the expanded programme on immunization, control of diarrhoeal diseases, acute respiratory infections and water-borne diseases. The quantified target of these programmes is a reduction of one quarter in neonatal mortality and mortality in the 0-5 years age group (61 per thousand in 1991, 58.7 per thousand in 1993, 40 per thousand in 1995) and the eradication of some diseases (poliomyelitis,

neonatal tetanus). A reduction in the infant mortality rate of the order of 35 per thousand is planned to be achieved by the year 2000.

10. Punishment of persons who have committed acts of torture or inflicted cruel, inhuman or degrading treatment or punishment

53. Torture and other cruel, inhuman or degrading treatment or punishment is prohibited by the Constitution (arts. 33 and 34). The Penal Code makes acts of torture an offence (art. 110 bis). This article stipulates that "any official or officer who uses or orders the use of torture to obtain confessions shall be punished by a term of imprisonment of from six months to three years". An official or police officer who, without himself committing the material act, has ordered another to use torture is thus treated as the torturer himself.

54. Executive Decree No. 92-276 of 6 July 1992 on the Code of Medical Ethics stipulated in its article 12 that "a doctor or dental surgeon who is asked or required to examine a detainee may not, whether directly or indirectly, even if only by being present, encourage or support an attack on the detainee's physical or mental integrity or dignity. If he finds that the detainee has been maltreated or brutalized he must so inform the judicial authority. A doctor or dental surgeon must never assist, participate in or allow acts of torture or any other form of cruel, inhuman or degrading treatment".

55. Furthermore, under article 332 of the Code of Criminal Procedure, "any established authority, public official or civil servant who, in the exercise of his functions, learns of a crime or offence, is required to inform the Department of Public Prosecution thereof without delay and to transmit to the Department any information, reports or documents relating thereto". Article 72 of the Code stipulates that "any person who claims to have been injured by an offence may, by filing a complaint, bring a criminal indemnity action before the competent judge".

56. The courts have sentenced many members of the security forces and legitimate defence groups to terms of imprisonment for excesses in the exercise of their functions. The number of sentences of punishment by the courts was 128 as at 31 December 1997. On 18 November 1996 the Committee against Torture considered the second periodic of Algeria (CAT/C/25/Add.8).

11. How long is it before the family of a detainee is informed and how long before the detainee may contact a lawyer?

57. A detainee may be held in police custody for 48 hours (article 45 of the Constitution). When, for the purposes of the enquiry, an investigating officer is led to continue holding the detainee for a further period the detainee must be brought before the public prosecutor before the expiry of that period. After hearing the person brought before him and inspecting the file, the prosecutor may give written authorization for an extension of custody for a new period of no more than 48 hours.

58. While a detainee is being held in custody the investigating officer is required to enable him to have immediate and direct contact with his family and to allow visits (article 51 of the Code of Criminal Procedure). On expiry of the custody period, a medical examination shall be made of the person detained

if he requests such an examination directly or through his counsel or family. The examination shall be carried out by a physician of his choice.

59. In addition to a statement of the grounds for holding in custody, the investigating officer must also note on the deposition the length of the periods of questioning of the detainee and the length of the rest periods between them, and the date and time when the detainee was either released or brought before the appropriate member of the legal service. That record must be confirmed by the signature of the detainee.

60. Violations of the provisions concerning holding in custody render the investigating officer liable to the penalties for arbitrary detention and are punishable by imprisonment for between six and 24 months (article 110 of the Penal Code). Any investigating officer who refuses to submit to the procurator the special register of the names of persons held in custody shall be guilty of the same offence and liable to the same penalty. An officer who refuses, despite the instruction of the procurator, to allow the medical examination of a detainee in his care shall be liable to a sentence of from one to three months.

61. With regard to the Code of Criminal Procedure, preliminary investigation is obligatory in criminal matters (art. 66). The records of investigating officers count as simple information and not as evidence (art. 215). Consequently, the investigating judge, to whom criminal matters must be referred, must start again at the beginning and proceed to new investigations and hearings. The period of preventive detention may not exceed four months for lesser indictable offences and 12 months for felonies.

12. Administrative detention in custody centres

62. There have not been any custody centres in the country since November 1995. Following the state of emergency proclaimed on 9 February 1992 (decree No. 92-44) after the electoral process had been interrupted, the calls for armed uprising made by the Islamic Salvation Front led to a wave of violence that, between 12 February and 10 March, cost the lives of 134 people, 31 of whom were law-enforcement officers. Following upon that, the security forces began questioning campaigns, interrogating 8,891 people. In all 6,786 people were put into custody centres opened in the South of the country:

| Location | When opened | When closed | Maximum number of internees |
|---|---|---|---|
| Adrar (Tsabit) | 29 April 1992 | 2 December 1992 | 540 |
| Bechar (Oued Namous) | 29 April 1992 | 15 December 1994 | 960 |
| Bordj Omer Driss | 20 February 1992 | 17 November 1992 | 641 |
| El Homr | 25 February 1992 | 3 July 1992 | 299 |
| In M'guel | 29 February 1992 | 27 November 1995 | 649 |
| In Salah | 10 February 1992 | 14 March 1993 | 500 |
| Menaa | 19 February 1992 | 20 June 1992 | 500 |
| Ouargla (Saïd Okba) | 20 February 1992 | 24 March 1993 | 2,133 |
| Reggane (under canvas) | 10 February 1992 | 2 August 1992 | 543 |
| Reggane (civil prison) | 10 February 1992 | 4 August 1992 | 2,504 |
| Timimoun (Tiberghamine) | 29 April 1992 | 29 October 1992 | 497 |

NB. Because of transfers from camp to camp the number of people in the various centres is greater than the total number of detainees.

63. The detainees were released progressively from May 1992 onwards. In September 1992 there were only 2,400 still detained, and one month later there were less than 1,000. Administrative detainment has not been used since September 1993. Seven centres were closed less than 10 months after their opening and the last was closed in November 1995.

64. At the legal level, the decree proclaiming the state of emergency stipulates that the Minister of the Interior could "order the placing in custody centres, in a specified place, of any adult whose activity threatens public order and the safety of persons or interferes with the proper functioning of the public services" (art. 5).

65. Another decree, No. 92-75 of 20 February 1992, laid down the conditions for the application and introduction of the state of emergency, and defined placing in custody centres as "an administrative measure of a preventive nature which consists of depriving all adults whose behaviour might endanger public order and safety, as well as the proper functioning of public services, of their freedom of movement by committing them to one of the custody centres created by decree of the Minister of the Interior".

66. A decree of 24 April 1992 provided that the detainee, his family or his counsel could appeal against the committal order to the wali of the wilaya of the detainee's place of residence. To that end six regional appeals councils made up of representatives of the authorities and of civilian society were set up; these councils were required to issue their decisions within 15 days. All detainees in custody centres who lodged an appeal had it considered.

67. The exceptional measures taken during the state of emergency were all accompanied by guarantees of protection of human rights. No restrictions were placed on the rights and freedoms enshrined in articles 6, 7, 8, 11, 15, 16 and 18 of the International Covenant on Civil and Political Rights. Detainees in custody centres received assistance and medical care . Their families and their counsels were permitted to visit them or to contact them. Their freedom of correspondence and communication were maintained.

13. Imprisonment for fraud or false declaration and prohibition of imprisonment on the ground of inability to fulfil a contractual obligation

68. Enforcement against the person is not applied in relations between individuals. The Penal Code does provide for enforcement against the person for a maximum of two years.

14. How may the practice of military courts dealing with offences committed by civilians be reconciled with the provisions of article 14 of the Covenant?

69. Article 25 of the Military Criminal Code restricts its field of competence exclusively to members of the armed forces. Civilians may, however, also be dealt with by military courts if they have committed an offence in a military zone or in association with members of the armed forces.

15. Independence of the Constitutional Council

70. The members of the Constitutional Council are appointed for a single term of six years (article 154 of the Constitution). Their independence stems from the non-renewable nature of their mandate, but also from the responsibilities entrusted to them by the Constitution, especially the responsibility to monitor the regularity of electoral and referendum procedures and the constitutionality of legislative and regulatory provisions (arts. 153, 155, 157, 158 and 159).

71. The President of the Constitutional Council is designated by the Head of State. Four other members are elected, two by the Supreme Court and two by the Parliament. In addition, only the President of the Republic may dismiss members of the Constitutional Council (art. 83) and that right cannot be delegated.

16. Why are judges irremovable only after they have served for a full 10 years?

72. Because of the geographic distribution of staff, which must also take into account the size of the country, the limited number of judges and the needs of the service.

17. Legal aid

73. It is a general rule that free legal aid should be available for all persons deemed to be without means by a legal commission consisting of representatives of the prosecuting authorities and the bar, which appoints a counsel. In criminal cases and in the juvenile court the accused must be assisted by counsel; if the accused lacks the means to engage counsel, the bar association appoints counsel for him.

18. Privileges enjoyed by Islam relative to other religions

74. Freedom of religion is established by the Constitution and guaranteed by the social practice in force since Islam reached Algeria in the 7th century. The religions existing in Algeria are Islam, in the Sunnite form - followed by the overwhelming majority of the population - and the Ibbadite form - originally practised in the Mzab region, but increasingly present elsewhere in the country because of population movements - and Catholicism, Protestantism and Judaism. The population movements in 1962, on the independence of the country, led many members of the Christian and Jewish communities to opt for exclusive French nationality, under the Evian Agreements, and to return to France of their own free will; the numerical importance of followers of these two religions was thereby reduced. Outside the foreign communities, there are today scarcely three thousand Algerian citizens who practise Catholicism and a few hundred who practise Judaism.

75. Under the Constitution, Islam is the State religion. Nevertheless, articles 3 and 4 of Act 63-278 of 26 July 1963 concerning holidays recognize the right of Algerian nationals and aliens of the Jewish or Christian faiths to have rest days to celebrate religious feasts. In addition, equal access to the public service is guaranteed to all citizens.

19. Meeting of Parliament during the periods of the state of siege, between June 1991 and February 1992. Restrictions on freedom of association, the right to strike and the right to organize public meetings during those periods

76. The state of siege decreed on 5 June 1991 for a period of four months was lifted on 29 September 1991. Its proclamation did not lead to suspension of the Constitution or dissolution of the National People's Assembly (Parliament), which continued to meet until just before the first round of elections to the legislature on 26 December 1991.

77. No restriction was placed on the rights and freedoms of associations. However, the organization of public meetings, previously subject to prior notification 48 hours beforehand, henceforward required authorization from the wali, which had to be requested at least eight clear days before the planned date of the event.

20. Measures taken to promote and preserve Berber culture and language

78. Since independence Algeria has sought, through its educational and cultural policy, to ensure the preservation of its very extensive cultural heritage. It should be noted that Berber speakers were, in an initial phase, given increased attention in the audiovisual media, especially on the radio, and that specialized tuition in the Berber language was available in the University of Algiers. However, as the country has developed, much academic thought has been given to the various aspects of the anthropological facilities of Algeria and how it can best be reflected in the life of the community. The National Cultural Colloquium in 1968 was a key moment. Subsequently there has been a more significant advance, since the establishment in 1995 of an Amazighite High Commission (the Berber substrate of the Algerian personality) was a highly innovative move. Under its aegis, the educational and scientific means for the teaching of the Amazighe language in primary schools, secondary schools and the university have been given effect. Lastly, the preamble to the revised Constitution of January 1996 has recognized the components of Algerian identity as "Islam, Arabism and Amazighiteism".

## II. NEW INFORMATION CONCERNING ARTICLES OF THE COVENANT

### Article 1: The right of peoples to self-determination

79. Algeria has established the principle of solidarity with "all peoples fighting for political and economic liberation, for the right of self-determination and against all racial discrimination" as a constitutional principle. This aspect is linked, historically, with the struggle of the Algerian people to regain their independence. Algerian diplomacy has, moreover, always worked to reinforce international co-operation and to develop friendly relations between States on the basis of equality, mutual interest and non-interference in internal affairs" (art. 28). It is expressly stated that the leaders of the country shall "refrain from resorting to war to violate the legitimate sovereignty or liberty of other peoples" (art. 26).

80. The effect of these elements of the revised Constitution of 28 November 1996 is to make the principle of solidarity referred to in article 27 applicable solely to the "colonial peoples and territories" covered by General Assembly resolution 1514(XV) of 14 December 1960. In that context, Algeria has continued to support peoples struggling for their national liberation, especially the peoples of Palestine and Western Sahara. Parallel to that, the Algerian Government has pursued its active and voluntarist policy of supporting measures aimed at combating, at the international level, all forms of political, racial and religious discrimination.

## Article 2: Non-discrimination and implementation of the provisions of the Covenant

81. The principle of non-discrimination has been respected by legislation since the independence of Algeria. This rule is made easier because practices involving racial discrimination are traditionally unknown in Algerian society.

82. Articles 27 and 42 of the revised Constitution prohibit all discrimination based on race, language or religion. The Civil Code, the Penal Code, the Code of Criminal Procedure, the Electoral Code and the various special codes (commerce, information, health, Customs, etc.) are based on the principle of the equality of all citizens without discrimination. None of their provisions has been considered by the Constitutional Council to be against the spirit or the letter of the Covenant on Civil and Political Rights. It may be recalled that one of the particular duties of the Constitutional Council is to monitor that legislation conforms with the Constitution and the international agreements signed by Algeria, to censure any violation of the principle of the equality of citizens and to verify that legislation and regulations applied to foreign nationals are compatible with the Constitution and the international agreements ratified by Algeria.

83. It is noteworthy that the Constitutional Council twice censured parliamentary proposals in 1989 and 1995 for the amendment of the Government's drafts of an electoral act by the introduction of impediment clauses regarding candidates for elected posts if either they or their wives did not have Algerian nationality by birth, which the Council regarded as "contrary to the Constitution and international agreements". It acted similarly when, on 6 March 1997, on a submission from the President of the Republic, it had to pronounce on the acts concerning political parties and the electoral regime.

84. On 4 and 5 August 1997, the Committee on the Elimination of Racial Discrimination considered the eleventh and twelfth periodic reports of Algeria contained in a single document (CERD/C/280/Add.3) submitted on 3 March 1996.

## Article 3: Equal rights of men and women

85. The principle of the equality of the sexes is established in Algerian legislation by virtue of articles 29, 31, 33, 36 and 51 of the Constitution. Equality is also established in the area of the earnings of women, who receive equal pay for equal work.

86. A gradual reduction in illiteracy among women has been made possible by the schools policy (81% of women in 1977, 56% in 1987 and 49% in 1993) and the

opening up of the labour market to women (5.9% of the female population were employed in 1977, 8.1% in 1987 and 10.1% in 1993). Young women increasingly have equal access to vocational training and were 38.9% of the total number receiving training in 1992. A survey conducted in 1990 by a group of women in Sétif (a medium-sized town in the interior of the country) on the work/marriage relationship revealed that 80% of women wanted to keep their jobs after marriage and that a root cause of 40% of divorces was the refusal of the husband to let the wife work. This trend is being accentuated as employment for women increases in quality: 34% of working women were illiterate in 1994; while in 1997 the proportion was no more than 12.5%. From now on 67% of working women have at least secondary education, as against 19% of working men. Some 54% of working women are unmarried and the proportion of working women from broken marriages, i.e. widowed or divorced, is 16%. With regard to personal status, the Algerian Government intends progressively to introduce elements of non-discrimination and equality of the sexes, while preserving the irreversibility of the gains made.

87. By way of illustration, 498 of a total of 2,164 judges on 15 September 1995 were women, distributed as follows: 26 out of 166 in the Supreme Court, 128 out of 654 in the courts and 344 out of 1,344 in the ordinary courts. This development is evidence of a profound change in outlooks.

88. An identical development is to be found in another key sector of social evolution: the schools. The female share of the numbers of pupils in primary, middle, secondary and university education is now between 45 and 48%. Some 43% of the teachers in primary schools are women (this figure reaches 82% of the teaching staff in the country's five largest cities, Algiers, Oran, Constantine, Annaba, Sétif), 47% in middle school education (71% in the aforesaid cities) and 33% in secondary education (61% in the aforesaid cities). In the end, and whatever its rate, the prescriptive change will unfailingly follow this development.

89. Statistics in the medical and pharmaceutical sectors reveal the increasing feminization of the health professions: in 1996 the feminization rate was estimated at 51%; for doctors it is 36% in teaching hospitals, 46.7% among specialists and 48.6% among general practitioners. The rate rises to 64.4% among dental surgeons and 65.4% among pharmacists.

90. The recent ratification by Algeria of the Convention on the Elimination of All Forms of Discrimination against Women is one facet of this willingness for progressive emancipation. That Convention has aroused and still does arouse heated debate and the adoption of entrenched positions coming both from conservative elements, who see it as a roundabout way of returning to the Family Code, and from "progressive" elements, who want to see that Code revised. The stance of the Government has been to accede to the Convention with some reservations, having regard to Algerian reality, and to use accession to this Convention and to others of the same kind as an argument in favour of social and normative development; as that development comes to fruition it should ultimately lead in itself to the lifting of the aforesaid reservations. The fact of having acceded to the Convention is leading the Government to consider making amendments to the Family Code, which will be submitted to the pluralist National Assembly in the life of the present Parliament.

## Article 4: States of emergency

91. In accordance with the procedures laid down by the Covenant, the Algerian Government informed the other States party, through the good offices of the Secretary-General of the United Nations, of use of the right to derogate from some of its obligations (see paragraph 36 above).

92. On the practical level, the authorities scrupulously respected the principle of strict proportionality between the severity of the crisis and the measures adopted to deal with it. The purpose of those measures was to overcome the imminent peril described in article 87 of the 1989 Constitution and article 91 of the revised Constitution (serious threat to the institutions of the country from the public appeal for disobedience of the security forces launched by the leadership of a political party, the expressed desire to dissolve the police force and replace it by "vice squads", armed aggression against the police and the military, sabotage of State institutions and destruction of public property). The state of emergency, initially introduced for one year, was extended on 6 February 1993 (Decree No. 93-302) because of the persistence of terrorist criminal activity.

93. The aim of the state of emergency is to restore public order and better ensure security of person and protection of property as well as the proper functioning of public services. For the implementation of the state of emergency the following powers were given to the Minister of the Interior, for the entire national territory, or the wali, for his district:

(a) To restrict or forbid the movement of persons and vehicles at specific times and places;

(b) To control the movement and distribution of foodstuffs and essential goods;

(c) To set up regulated residential zones for non-residents;

(d) To deny residence to all adults whose actions prove harmful to public order and to the functioning of public services; or to place them under house arrest;

(e) To requisition workers to carry out routine professional tasks in cases of unauthorized or illegal strikes;

(f) On an exceptional basis, to order searches, both during the day and by night.

94. Under the terms of article 5 of the aforementioned Decree, "the Minister of the Interior may order any adult whose actions prove dangerous to public order, public safety or the proper functioning of public services to be committed to a custody centre in a specified place". This measure, which had to be invoked by the authorities, especially during the months immediately following the proclamation of the state of emergency, was prompted by a concern to curb acts of violence which jeopardize public order, individual security and social peace, threatening national stability in the process.

95. Another decree (No. 92-75 of 20 February 1992) lays down the conditions for applying some of the provisions of the decree on the state of emergency. It defines committal to a custody centre as "an administrative measure of a preventive nature which consists of depriving all adults whose behaviour might endanger public order and safety, as well as the proper functioning of public services, of their freedom of movement by committing them to one of the centres created by decree of the Minister of the Interior". Committal was ordered by the Minister of the Interior or by the authority delegated by him, It could be appealed against to the wali of the wilaya of the detainee's place of residence. Appeals, investigated and accompanied by any relevant observations, were submitted to the Regional Appeals Council, which issued its decision within 15 days following the referral. It is appropriate to recall that all these centres have been closed and the persons arrested released.

96. It should be pointed out that the exceptional measures taken during the state of emergency were all accompanied by guarantees of protection of human rights. No restrictions were placed on the rights and freedoms enshrined in articles 6, 7, 8, 11, 15, 16 and 18 of the International Covenant on Civil and Political Rights. Furthermore, the measures for maintaining or restoring order which the Minister of the Interior or the wali were empowered to take had to be "in keeping with government directives", particularly with regard to the observance of human rights and fundamental freedoms.

**(a) The law on terrorism and subversion**

97. Confronted by the legal vacuum over the new phenomenon of terrorist criminal activity, the authorities drafted a specific legal instrument, Decree No. 92-03 of 30 September 1992, which created specialized bodies, called "special courts", to try cases of terrorism. A terrorist act was defined in it as "any violation of State security, the territorial integrity of the country or the stability and normal functioning of institutions by any act having the object of sowing terror among the population and creating a climate of insecurity by attacking persons or property".

98. Apart from the violations covered by the Penal Code - the penalties for which are aggravated - the law on terrorism and subversion provided new offences for the authors of terrorist acts, their accomplices and their instigators. The idea was introduced of a sentence of non-reducible duration and the age of civil liability was restored to 16 years. In parallel, the Act created special courts with the aim, inter alia, of speeding up proceedings.

99. These special courts were not courts of special jurisdiction; in effect, they were "special" only with regard to the nature of the offences which they were responsible for trying, in which respect they differed from courts dealing with questions of general law. In effect:

(i) These courts were composed exclusively of professional magistrates of the ordinary law judiciary, who by regulation are subject to the law on the status of the magistrature. The fact that there was an obligation not to disclose the identity of these magistrates does not mean that it was not disclosed to the defence lawyers of the accused, who might possibly challenge them, but was dictated purely by considerations of security;

(ii) The rules of the Code of Criminal Procedure were applicable to the types of cases that could be tried by them;

(iii) Their hearings were public, open to members of the family and to the national and international press;

(iv) The rights of the defence were scrupulously observed, and accused persons who were unable, for financial reasons, to avail themselves of the services of a lawyer could have one appointed for them by the President of the Bar. From April 1993 onward, defence lawyers in the special court had theoretically to be approved by the courts, but this measure was withdrawn following a boycotting movement by lawyers;

(v) The remedies allowed in ordinary cases were available to the accused at different stages in the proceedings: they could, in particular, appeal to the Supreme Court, which could possibly set aside the judgements and send back the case and the parties to appear before new courts made up of other magistrates;

(vi) Lastly, in accordance with the Constitution and the law, persons condemned to death could appeal for Presidential pardon.

100. Between October 1992 and October 1994, 13,770 persons were judged by the special courts and 3,661 of them, or 25% of those appearing, were acquitted. There were 1,661 sentences of death, 1,463 of which were passed in absentia, and 8,448 sentences of imprisonment. There are 118 reform and rehabilitation establishments in Algeria, with a capacity of 25,000; six of them are regarded as high-security establishments. Considerable numbers of people were granted a remission of sentence on the occasion of national and religious holidays and on the occasion of the presidential elections between 1994 and November 1997. In addition, the system of release on parole, which enables a detainee who has served a part of his sentence to be released on the responsibility of the judges responsible for reviewing sentences, was applied to 367 detainees between 1994 and 1996.

**(b) Amendments to the Criminal Code and the Code of Criminal Procedure**

101. The growing experience of the struggle against terrorism at the judicial level led in February 1995 to standardization of the judicial system through the abolition of the special courts and abrogation of the decree of September 1992 on terrorism and subversion. That development was the work of Ordinance No. 95-11 of 25 February 1995, which amends and supplements the earlier provisions. Henceforward, "terrorist and subversive crimes" are legally defined and are to be dealt with by the criminal courts. From that time, terrorist activity has been deemed to be a form of delinquency to be handled by the ordinary courts.

102. A new article of the Penal Code, art. 11 bis, defines a terrorist and subversive act as "any act directed against State security, territorial integrity or the normal functioning of institutions if it has one of the following aims:

(i) To sow terror among the population and create a climate of insecurity by morally or physically attacking persons, endangering their life, freedom or safety or damaging their property;

(ii) To hinder traffic or freedom of movement on the roads and fill public places with crowds;

(iii) To commit an outrage against the symbols of the nation and the Republic and desecrate tombs;

(iv) To attack means of communication and transportation, as well as public and private property, through illegal seizure or occupation;

(v) To harm the environment or introduce into the atmosphere, earth, subsoil or waters, including the territorial sea, any substance which might endanger the health of mankind or animals or the natural environment;

(vi) To hinder the action of the public authorities or the free functioning of establishments providing a public service;

(vii) To hinder the functioning of public services or attack the life or property of their agents, or impede the implementation of laws and regulations.

**(c) Ordinance on clemency measures**

103. At the same time and to encourage the restoration of civil peace, the State has initiated clemency measures capable of providing an opportunity for terrorists who wish to become law-abiding once again. A clemency law was adopted, aimed at "repentant" terrorists, providing for a series of measures ranging from exemption from prosecution to substantial reduction of sentence ((Ordinance No. 95-12 of 25 February 1995). The main provisions of the ordinance lessen the penalties provided in article 87 bis of the Penal Code. Thus:

(i) Any person who has belonged to a terrorist organization and who has not committed an offence leading to loss of life, permanent disability, breach of the moral or physical integrity of citizens or destruction of public property, shall not be prosecuted (art. 2);

(ii) Any person who has been in possession of arms, explosives or other weapons and who voluntarily turns them over to the authorities shall not be prosecuted (art. 3);

(iii) If the persons covered by the first article have committed crimes entailing loss of human life or permanent disability, the sentence shall be 15 to 20 years' imprisonment, when the legal penalty is the death sentence, and 10 to 15 years' imprisonment, when the penalty is life imprisonment. In all cases the sentence shall be reduced by half.

105. The persons covered by the ordinance shall be taken immediately to the competent court and brought before the Government Procurator (art. 7), who must immediately prepare a report establishing the facts and initiate public proceedings. The persons concerned may, if they so request, undergo a medical examination. Down to the present time, more than two thousand persons have benefited from these clemency measures and been reintegrated into society.

**(d) Machinery of the transition period**

106. All the legal political parties, some associations, trade unions and historically important figures who had played a part in political life were involved during 1993 in consultations that led to the holding of the National Dialogue Conference in January 1994. In addition to recalling the constitutional foundations of the activity of the authorities, that conference approved a transition programme to be spread over a period of three years, during which the interlinked State bodies would be the following

(i) A State President with the prerogatives vested in the President of the Republic by the Constitution and with the responsibility of preparing the conditions for return to an electoral process;

(ii) A National Transition Council, a legislative body with 30 political parties and 48 associations, which functioned as the Parliament and was in charge of the codification of the recommendations made by the National Dialogue Conference and examination of the regulatory provisions for electoral operations;

(iii) A Transitional Government established on a non-partisan basis, under the authority of the President of the State, to manage day-to-day Government policy and to make technical preparations for the elections.

**(e) Return to the electoral process**

107. In this context, the first multi-party presidential elections were held on 16 November 1995; 75.4% of the persons on the electoral register took part. Preparations for the elections were made in association with the political parties interested in an effective return to the electoral process. The election campaign and the scrutiny took place peacefully and impartially, in the presence of representatives of the national and international press and international observers.

108. At the time of his investiture, the newly-elected President of the Republic reiterated the undertaking to continue to carry out the transition programme and, in particular, to organize legislative and local elections, instructing the government to "do everything to ensure that these elections can be held at any time".

109. The holding of these elections led the President to engage in a series of talks leading to the holding of a conference of national reconciliation on 15 and 16 September 1996, at the close of which the political parties adopted a policy platform. Through the impetus given by the President of the Republic,

the transition bodies, namely the government and the National Transition Council were given the responsibility of carrying out the recommendations of the policy platform.

110. It was in this context that, in an initial stage, a referendum on the revised draft of the Constitution was held on 28 November 1996 (85.81% of votes were for the revision). It is appropriate to mention that among the new features introduced into the Constitution, apart from reaffirmation of the triptych Arabism, Islamism and Amazighiteism, the areas of freedoms and the State subject to the rule of law were strengthened. In that context mention may be made of: (i) the intangible principles of the exercise of democratic pluralism; (ii) prohibition of attacks against the integrity of the citizen (art. 34); (iii) freedom of commerce and initiative (art. 37); (iv) the obligation on the State to encourage the flourishing of associations (art. 43); (v) organization of states of emergency by an enabling Act (art. 92); (vi) strengthening of the powers of the National Assembly; (vii) creation of a Second Chamber: the Council of the Nation; (viii) restriction of the presidential mandate to two terms; (ix) creation of a Council of State and a Jurisdiction Court (art. 152); (x) establishment of a High Court of Justice (art. 158) and (xi) enlargement of the composition of the Constitutional Council in accordance with the new institutional scene (art. 164).

111. To give effect to these measures the Government initiated legislation to confer authority on those engaged in political life and to provide a structure and procedure for the elections ratified in the extraordinary meeting of the legislature convoked on the initiative of the President of the Republic on 25 January 1997.

***The enabling Act on political parties***

112. This purpose of this new provision is to fill the gaps in the Constitution of 23 February 1989 amended by the revised Constitution of 28 November 1996. Article 42 of the revised Constitution recognizes and guarantees the right to establish political parties. It also lays down a general regulatory framework for their activities. The amendments concern the points briefly analysed below.

113. The conditions for the creation of political parties have been reviewed in the light of the experience gained in implementing Act 89-11 of July 1989 and the deviations noted in the exercise of partisan activity. Article 3 of the new Act, which takes its inspiration from the platform of national unity, sets out the principles and aims to which political parties should conform, namely: (i) to refrain from attacking the values and elements of the national identity; (ii) not to undermine the security and integrity of the national territory; (iii) to strengthen the independence of the country and the sovereignty of the people; (iv) to promote the democratic and republican form of the State; (v) to respect the changeover of power through the law of free choice by the people.

114. Article 13 of the Act determines the conditions and criteria that must be met by the founding members of a party, the number of which is raised to 25. Their main task is to prepare the conditions for the holding of an inaugural congress, which must be attended by 400-500 delegates elected by 2,500 members in at least 25 wilayas. A political party does not effectively exist until its

statutes and aims have been adopted by its inaugural congress, which must be held within one year at the latest from the time of the filing of its notice of constitution at the level of the Ministry of the Interior.

115. The rules for the functioning of political parties are based on renunciation of recourse to violence and coercion as a means of expression or political action. Furthermore, article 7 prohibits political parties from taking any action abroad undermining the State, its symbols, its institutions and its economic and diplomatic interests as well as from having any ties with a trade union or association.

116. Disqualifications are set out in article 10: they concern the members of the Constitutional Council and also officials in positions of authority and responsibility; they also concern officials whose special status or rules of procedure give rise to the same disqualifications.

117. The financing of a political party is rigorously defined in articles 27 to 30 inclusive. A political party may not engage in any commercial activity and its income from membership dues must not exceed 10% of the guaranteed national minimum wage per person per year, and 100 times the minimum wage per person per year for gifts and legacies from identified physical persons; such gifts and legacies must not exceed 20% of the income from membership dues.

118. The adjustment of transitional periods has been envisaged in articles 43 and 44 in favour of "associations of a political nature" formed under the authority of the old Act No. 89-11 of 5 July 1989. A period of two months was adopted to enable them to conform to the provisions of the Constitution of 28 November 1996 and the new Act, and one year from the time of its publication for the holding of the inaugural congress and adoption of the statutes.

***The enabling Act on the electoral regime***

119. This is the second legislative text to give expression to the amendments in the revised Constitution. This new Act proposes a series of changes, largely as a response to the complaints of the political parties and to ensure greater coherence for the whole of the electoral apparatus. These changes are summarized in the paragraphs that follow.

120. Plural voting is prohibited. The voting procedures are as follows: if the votes of members of the National People's Army and of members of the security forces have been reorganized, notably voting in the place of work by the formula of itinerant polling stations, the proxy is refined to take into account the diversity of the situations that may arise.

121. The voting procedures adopted for the elected assemblies tend to ensure greater fairness in the representation of the political parties and currents of opinion in society. While having regard to the stability of the structural edifice, the enabling Act adopts the formula of proportional representation to avoid the situation that prevailed at the time of the electoral consultations organized under Act No. 89-13 of 7 August 1989.

122. The representation of Algerians nationals abroad in the National People's Assembly is an innovation and a positive element in the gradual consolidation of

the democratic process. Article 64 recognizes the right of an Algerian national resident abroad to vote by proxy, while article 101 provides that his eligibility to vote in elections for the National People's Assembly shall be exercised through the diplomatic bag of embassies and consulates (art. 108) and that the electoral division of the constituencies in which he is established shall be the subject of legislation on the division of constituencies (art. 101).

123. The Act further institutes constituency commissions to register the results of the vote and an electoral commission of residents abroad, which shall consist of three magistrates whose task is to centralize the final results before forwarding them to the Constitutional Council for validation.

124. Provision for elections to the Council of the Nation are made in article 101, paragraph 2 of the revised Constitution. Two thirds of the members of that second chamber are elected by indirect secret ballot for a mandate of six years, with a half of them renewed every three years at the level of the constituencies of the wiliya by and from among the members of the communal people's assemblies and the people's assemblies of the wiliya. The mode of balloting is the plurinominal majority ballot and the lower age limit for candidates is 40 years in order to ensure greater maturity in the composition of the Council (arts. 122, 123 and 127-129). The arrangements for convening the electoral college and for the organization, holding, monitoring and counting of the vote are regulated by arts. 124-126 and 133-148. Announcement of the results is the duty of the Constitutional Council, which gives a ruling within three clear days should the results be contested by the candidates (art. 149).

125. Presidential elections: in addition to the principles agreed during the Conference of National Reconciliation, the Act deals with the amendments introduced in the context of the revised Constitution concerning the validity of candidatures (art. 157). The new provision (art. 159) allows sponsorship of candidates for election to the Presidency:

(a) by a college of elected members of the communal and wiliya people's assemblies and the Parliament covering 25 wiliyas and signed by at least 600 elected persons;

(b) by a list of 75,000 signatures from at least 25 wiliyas containing a minimum of 1,500 signatures per wiliya.

Lastly, in application of articles 88 and 89 of the Constitution of 28 November 1996, articles 161 and 163 of the Act empower the Constitutional Council to postpone electoral operations or extend the time schedules for new elections in the event of the reported death of or a legal impediment to a candidate in the presidential election.

126. The provisions for the electoral campaign have been restructured so as to set new rates of remuneration in the light of the proportional voting method (art. 188). Furthermore, the use of educational establishments for purposes of election propaganda is prohibited.

***Division into constituencies***

127. Under articles 30 and 101 of the enabling Act on the electoral regime the number of seats to be provided for elections to the National People's Assembly and the Council of the Nation is referred to a legislative text. By its article 2, the same Act confirmed the administrative boundaries of the wiliya as the one and only electoral constituency to serve as a reference point for the balloting method of the proportional list.

128. The parameters used in calculating the number of seats for the National People's Assembly are:

(a) The number of inhabitants per wiliya (projections of the National Statistical Office for 1997);

(b) Allocation of a minimum of four seats to wiliyas with a population of 350,000 or less;

(c) Allocation of one seat to 80,000 inhabitants and an additional seat for every 40,000 of the balance.

Furthermore, the national community living abroad is represented by eight deputies, a figure arrived at by combining the number of electors on the electoral rolls and their geographic distribution (four for France, one for the rest of Europe, one for the Maghreb and Africa, one for the Arab world and one for America, Asia and Oceania). Accordingly, the total representation in the National People's Assembly is 380 deputies.

129. It may be stressed that the President of the Republic referrred to the Constitutional Council the task of ensuring that the first two drafts of the Act were in conformity with the revised Constitution of 28 November 1996.

***The legislative elections of 5 June 1997***

130. The legislative elections, the second stage in the establishment of democratic institutions, were held on 5 June 1997. They were preceded by:

(a) The establishment on 20 March 1997 of the National Independent Monitoring Commission for Legislative Elections (CNISEL), on which the legally recognized political parties were represented;

(b) An invitation to the United Nations Organization, the Organization of African Unity and the Arab League to observe the elections;

(c) A 21-day electoral campaign run by the candidates in contention, with fair access to the media.

131. The 380 seats of the Assembly were contested by 7,747 candidates belonging to 39 political parties and two alliances of independent candidates. According to Act No. 97-08 of 6 March 1997, which determined the electoral constituencies and the number of seats to be provided, the distribution of seats by population density and in decreasing order is as follows:

| Constituencies | Number of seats |
|---|---|
| Algiers | 24 |
| Sétif | 16 |
| Oran | 14 |
| Tizi Ouzou | 14 |
| Batna | 12 |
| Boumerdès | 11 |
| Béjaïa | 11 |
| Blida | 11 |
| Tlemcen | 11 |
| Chlef | 10 |
| Constantine | 10 |
| M'Sila | 10 |
| Médea | 10 |
| Tipaza | 10 |
| Mascara | 9 |
| Rélizane | 9 |
| Skikda | 9 |
| Tiaret | 9 |
| Aïn Defla | 8 |
| Bouira | 8 |
| Djelfa | 8 |
| Mila | 8 |
| Mostaganem | 8 |
| Annaba | 7 |
| Bordj Bou-Arréridj | 7 |
| Jijel | 7 |
| Sidi Bel Abbes | 7 |
| Biskra | 6 |
| El-Oued | 6 |
| Oum El Bouaghi | 6 |
| Tébessa | 6 |
| Guelma | 5 |
| Ouargla | 5 |
| Adrar | 4 |
| Aïn Témouchent | 4 |
| Béchar | 4 |
| El-Bayadeh | 4 |
| El-Tarf | 4 |
| Ghardaïa | 4 |
| Illizi | 4 |
| Khenchela | 4 |
| Laghouat | 4 |
| Naama | 4 |
| Saida | 4 |
| Souk Ahras | 4 |
| Tissemsilt | 4 |
| Tindouf | 4 |
| Tamanrasset | 4 |
| National community abroad | 8 |
| **Total** | **380** |

This first chamber, along with the Council of the Nation (144 seats) set up in December 1997, constitutes the Parliament (article 98 of the Constitution) (see paragraphs 139 and 140 below.

132. Article 122 provides that the Assembly shall legislate in the following areas, in addition to the powers already devolved upon it:

(i) The prison regime;

(ii) The property regime;

(iii) Regulation of money issue;

(iv) General rules on scientific research;

(v) General rules on the execise of trade union rights;

(vi) General rules on physical planning;

(vii) Land ownership;

(viii) Fundamental guarantees to officials and the general status of the civil service;

(ix) General rules on national defence and use of the armed forces by the civilian authorities;

(x) Rules for the transfer of property from the public to the private sector;

(xi) Creation of categories of establishment.

133. The definitive results of the legislative elections organized on 5 June 1997 were announced by the Minister of the Interior on 6 June 1997 subject to approval by the Constitutional Council. In accordance with article 163, paragraph 2 of the Constitution and in conformity with the provisions of the enabling legislation the electoral regime and division into constituencies, the Constitutional Council declared, after having examined the appeals of the political parties, that the results were as follows:

**Distribution of seats**

| | |
|---|---|
| National Democratic Union (RND) | 156 seats |
| Social Movement for Peace (MSP) | 69 seats |
| National Liberation Front(FLN) | 62 seats |
| Ennahda Movement (MN) | 34 seats |
| Socialist Forces Front (FFS) | 20 seats |
| Union for Culture and Democracy (RCD) | 19 seats |
| Independents (IND) | 11 seats |
| Workers' Party (PT) | 4 seats |
| Progressive Republican Party (PRP) | 3 seats |
| Union for Democracy and Freedoms (UDL) | 1 seat |
| Liberal Social Party (PSL) | 1 seat |
| **TOTAL** | **380 seats** |

Both in Algeria and abroad these elections were recognized as a significant advance in the establishing of democratic and pluralist institutions.

*Local elections*

134. In the context of putting finishing touches to the institutional edifice, the local elections were one of the stages in the programme of the Conference on National Reconciliation for the normalization of political life and the successful completion of the transitional phase. The local elections of 23 October 1997 were to fill 13,123 seats in the Communal People's Assemblies and 1,180 seats in the People's Assemblies of the wilayas, a total of 15,003 seats.

135. Thirty eight political parties, two alliances and many independents, a total of 5,741 lists of candidates, contested the 15,003 seats of the 1,541 Communal People's Assemblies and the 48 People's Assemblies of the wilayas. There were 5,541 lists of candidates contending the seats of the Communal People's Assemblies and 200 other lists representing 12 political parties and independents for the Seats of the People's Assemblies of the wiliyas.

136. As in the legislative elections, an Independent National Commission for the Monitoring of the Local elections (CNISEL) was established. It had offices throughout the national territory in the wilayas and the communes. Following a regular electoral campaign, the elections were held in the presence of a strengthened body of mediators on 23 October 1997. After the counting of the votes, the Minister of the Interior announced the following results subject to confirmation by the electoral commission of the wilaya , composed of three magistrates, in a communique dated 24 October 1997:

**Results of elections to the People's Communal Assemblies**

| Lists | Votes | Seats |
|---|---|---|
| National Democratic Union (RND) | 5,453,787 | 7,242 |
| National Liberation Front (FLN) | 2,026,200 | 2,864 |
| Society for Peace Movement (MSP) | 995,044 | 890 |
| Socialist Forces Front (FFS) | 343,379 | 645 |
| Independents (IND) | 372,114 | 508 |
| Union for Culture and Democracy (RCD) | 265,844 | 444 |
| Ennahda Movement (MN) | 404,566 | 290 |
| Algerian Revival Party | 58,590 | 43 |
| National Party for Solidarity and Development (PNSD) | 20,216 | 26 |
| Algerian National Youth Movement | 21,796 | 18 |
| Liberal Social Party (PSL) | 16,568 | 17 |
| Union for Democracy and Freedoms (UDL) | 17,214 | 15 |
| Union for National Unity | 13,589 | 11 |
| Social Democratic Party | 11,105 | 11 |
| National Bloc | 9,310 | 11 |
| Algerian Union | 11,626 | 10 |
| Just Liberator Party (PLJ) | 8,008 | 9 |
| Workers' Party | 11,741 | 8 |
| Popular Unity Party | 10,676 | 7 |
| Progressive Republican Party (PRP) | 6,314 | 6 |

| Lists | Votes | Seats |
|---|---|---|
| Social Justice Party | | 5 |
| Algerian National Union | 4,851 | 5 |
| Union of Democratic Youth | 19,399 | 4 |
| Ahd 54 | 4,851 | 4 |
| Algerian Liberal Party | 2,358 | 4 |
| National Democratic Socialist Party | 2,234 | 4 |
| National Movement for Nature and Development | 1,604 | 4 |
| Algerian Movement for Justice and Development | 981 | 4 |
| National Constitutional Union | 5,240 | 3 |
| MEN | 2,365 | 3 |
| National Boumedieneist Front | 5,491 | 2 |
| Popular Forces Front | 3,991 | 2 |
| Republican Party | 1,233 | 2 |
| Amel Movement | 1,687 | 1 |
| Socialist Workers' Party | 803 | 1 |
| Alliance | 15,842 | 0 |
| Movement of the Algerian People | 2,178 | 0 |
| Djihad for National Unity Front | 874 | 0 |
| Youth Union of the Algerian Nation | 474 | 0 |
| **TOTAL** | **10,161,014** | **13,123** |

**Results of elections to the People's Assemblies of the wiliyas**

| Lists | Votes | Seats |
|---|---|---|
| National Democratic Union (RND) | 4,972,666 | 986 |
| National Liberation Front (FLN) | 1,699,419 | 373 |
| Movement of Society for Peace (MSP) | 1,203,929 | 260 |
| Ennahda Movement (MN) | 744,730 | 128 |
| Socialist Forces Front (FFS) | 311,095 | 55 |
| Union for Culture and Democracy (RCD) | 281,247 | 50 |
| Independents (IND) | 74,652 | 17 |
| Liberal Social Party (PSL) | 15,987 | 7 |
| Algerian Union | 24,514 | 4 |
| Algerian Revival Party | 22,554 | 0 |
| National Party for Solidarity and Development (PNSD) | 6,399 | 0 |
| National Democratic Socialist Party | 4,313 | 0 |
| Union for National Unity | 3,186 | 0 |
| **TOTAL** | **9,382,691** | **1,880** |

137. In accordance with the provisions of the enabling legislation on the electoral system, several of the political parties and lists of independents submitted a total of 1,396 appeals within the time limits laid down. It may be pointed out that there were 71,394 polling stations for the local elections throughout the national territory and that the number of appeals was 1.95% of the total number of polling stations.

**Appeals**

National Liberation Front: 696 appeals

Society for Peace Movement: 287 appeals

National Democratic Union: 191 appeals

Socialist Forces Front: 26 appeals

Independents: 61 appeals

Union for Cultural and Democracy: 19 appeals

Ennahda Movement: 48 appeals

Algerian Revival Party: 18 appeals

Algerian Union, Algerian National Youth Movement, National Party for Solidarity and Development: 6 appeals each

National Bloc and Workers' Party: 4 appeals

Liberal Social Party, MEN and Progressive Republican Party: 3 appeals each

Social Democratic Party, Ahd 54, Amel Movement and Just Liberator Party: 2 appeals each

11 parties and one alliance: 1 appeal each.

138. Consideration of the appeals in the 21 wiliya commissions within the legally established time limits resulted in a redistribution of the seats in one or more communes:

| | **Communal People's Assemblies** | | | **People's Assemblies of the wiliya** | | |
|---|---|---|---|---|---|---|
| Parties/seats | Losses | Gains | Dirrerence | Losses | Gains | Difference |
| RND | 249 | 10 | -239 | 28 | 1 | -27 |
| FLN | 16 | 172 | +156 | 2 | 20 | +18 |
| MSP | 2 | 36 | +34 | 0 | 5 | +5 |
| Ennahda | 6 | 23 | +17 | 0 | 3 | +3 |
| FFS | 0 | 9 | +9 | 0 | 1 | +1 |
| RCD | 0 | 6 | +6 | | | |
| Independents | 0 | 8 | +8 | | | |
| Algerian Un. | 0 | 2 | +2 | | | |
| PNSD | 0 | 4 | +4 | | | |
| Ahd 54 | 0 | 1 | +1 | | | |
| PLS | 0 | 1 | +1 | | | |
| MEN | 0 | 1 | +1 | | | |
| | | | **+239** | | | |

*The Council of the Nation*

139. This second chamber, for which provision is made in the Constitution of 28 November 1996, is made up of 133 members, two thirds of whom are elected by and from among the members of the Communal People's Assemblies and the People's Assemblies of the wiliya uniformly throughout the national territory at a rate of two per wilaya, a total of 96 members, and one third of whom, 48 members, are designated by the President of the Republic.

140. The elections were held on 25 December 1997. The turnout was 14,224 out of a total of 15,003 registered voters, a participation rate of 94.81%. Having examined the reports of the wiliya electoral commissions, the Constitutional Council validated the results on 27 December 1997. The results were as follows:

| Political formations | Percentage of vote | Number of seats |
|---|---|---|
| National Dempcratic Union (RND) | 83.33 | 80 |
| National Liberation Front (FLN) | 10.4 | 10 |
| Socialist Forces Front | 4.16 | 4 |
| Society for Peace Movement (MSP) | 2.08 | 2 |
| **Total** | **100** | **96** |

In accordance with article 101 of the Constitution and after consulting the political parties, the President of the Republic designated the other 48 members, five of whom were women.

**Article 5: Restriction upon or derogation from human rights**

141. In application of the provisions of Act No. 89-11 on associations of a political nature, the dissolved Islamic Salvation Front (FIS) had to answer before the law for various violations of its obligations. It was accused, in particular, of having violated the security of the State, showing disrespect for the Constitution and laws of the Republic, misappropriating the resources of local communities to establish a military organization, coercion, incitement to violence, and preparing, leading and carrying out an insurrectionary strike that caused deaths and the destruction of communal and private property. On that basis, the Algiers Court delivered a judgement ordering the dissolution of the movement, which was confirmd by the Supreme Court.

**Article 6: Capital punishment**

142. The safeguards set out in resolution 1984/50 of the Economic and Social Council guaranteeing the rights of those facing the death penalty are all recognized and have been incorporated into Algerian legislation:

(a) Article 197 of Ordinance No. 72-2 of 10 February 1972 on the Prison Reform and Rehabilitation Code excludes the death penalty for minors, sick and incapable persons and pregnant or nursing mothers;

(b) The death penalty is pronounced only on the basis of incontrovertible facts or evidence of culpability;

(c) The decision is taken by full courts that are independent of the executive and have five magistrates sitting and arriving at their decision after deliberation in camera in the absence of a representative of the prosecution. Examination of the verdicts of the courts shows that they quite often go against the sentence demanded in the closing speech of the prosecution.

143. The right to life, the foundation of all human rights, is enshrined in the Constitution (arts. 33-35). Because it is the extreme penalty, sentence of death may be carried out only pursuant to a final judgement pronounced by the criminal court and may be commuted by many procedures (amnesty, commutation, Presidential prerogative of mercy, deferment, stay of execution, etc.). The sentence is carried out in the absence of the public, but in the presence of magistrates and, should the condemned person so desire, a doctor. The condemned

person also has the right to be assisted by a minister of his religious faith. No sentence of death has been carried out in Algeria since September 1993 (paragraphs 47 to 50 above).

**Article 7: Torture and cruel, inhuman or degrading treatment or punishment**

144. Since November 1992, following allegations of mistreatment reported in the press, the Ministry of the Interior has shown its readiness to sanction "persons guilty of practices forbidden by the laws of the Republic, disapproved of by the moral code of the State and violating human dignity". Even if excesses have been committed by members of the security forces in the course of police operations, there is not any systematic pracice of torture. Disciplinary and judicial sanctions have been applied to individuals guilty of torture and cruel, inhuman or degrading treatment or punishment. The Penal Code condemns acts of torture; article 110, paragraph 5 provides, in effect, that "any official or agent who carries out torture or orders it to be carried out in order to obtain a confession shall be punished by a prison term".

145. In January 1995 the National Human Rights Observatory (ONDH) submitted a memorandum to the Ministry of Justice in which it reported various cases of excesses, including allegations of acts of torture. The Ministry of Justice sent a directive to all State prosecutors asking them systematically to initiate judicial enquiries into complaints made on the basis of the cases documented by the Observatory. Article 35 of the revised Constitution states that "offences committed against rights and freedoms and physical or moral attacks on the integrity of the human being shall be punishable by law" The Algerian Government submitted its second periodic report to the Committee against Torture on 18 November 1996 (CAT/C/25/Add.8).

**Article 9: Liberty and security of person**

147. The individual has the right to liberty and security of person; no one may be prosecuted, arrested or detained except as provided by law and in the conditions laid down thereby (art. 47 of the Constitution). Persons who fail to comply with these requirements are liable to criminal prosecution, even if they commit the violations of the law in the performance of their duties. The custody system is subject to judicial control (art. 48 of the revised Constitution).

148. Article 291 of the Penal Code establishes penalties for kidnapping, arbitrary detention or sequestration: "Any person who kidnaps, arrests, detains or sequesters another person without an order from the established authorities, or who orders such kidnapping, arrest, detention or sequestration, shall be sentenced to rigorous imprisonment for five to ten years. The same penalty shall apply to any person who allows a place to be used in order to detain or sequester the other person. If the detention or sequestration has lasted for more than a month, the penalty shall be ten to twenty years imprisonment". The wording of this article in no way makes it possible to justify such acts by an order received: individuals may not be arrested without an order from the established authorities or in circumstances other than those allowed by law.

## Article 10: Humane conditions of detention

149. The rules that apply to the treatment of detainees are laid down in Ordinance No. 72-2 of 10 February 1972 establishing the Prison Organization and Rehabilitation Code; Ordinance No. 73-3 relating to the protection of children and young persons; Decree No. 72-35 of of 10 February 1972 establishing a coordinating committee for the promotion of prisoners' rehabilitation and work; Decreee No. 72-36 of 10 February relating to the observation and orientation of prisoners.

150. The Code of Penal Procedure defines pre-trial investigation procedures, search operations, interrogation and enquiry methods, as well as police custody and remand treatment, and provides safeguards, having regard to the rights of the defence.

151. In closed regimes, the duration of solitary confinement may not exceed one tenth of the length of the sentence, or three years in the case of persons sentenced to life imprisonment (Code, arts. 35 and 36). Prisoners may be kept in isolation only by decision of the visiting magistrate, who shall determine the duration of this measure (Code, art. 37).

152. The Code devotes a whole section (arts. 41 to 47) to the conditions of detention and to the rights and duties of detainees: the right to hygiene and to hygienic buildings and places of detention; the right to free medical assistance; the right to healthy and adequate food. On the practical level, steps have been taken to improve detention conditions by the erection of visiting rooms and reception rooms for the families of detainees, the opening of vocational training workshops, detention in establishments near the family home, and application of the procedure of release on parole.

153. The Prison Organization and Rehabilitation Code forbids "under pain of punishment, personnel from the Department of Re-education and Social Rehabilitation of Prisoners and any persons coming into contact with prisoners from taking direct or indirect action to exert influence on prisoners regarding their defence or choice of counsel" (art. 53). The Code affords prisoners the right, in the event of mistreatment or infringement of their rights, "to lodge a complaint with the governor". "If the alleged acts constitute a serious or a lesser offence, the governor shall immediately report them to the government procurator in the court within whose jurisdiction his establishment is situated and to the visiting magistrate. Where a prisoner finds that no action has been taken on his application, he shall be authorized to inform the visiting magistrate directly". Prisoners also have the right to lodge complaints and submit grievances to the officials and magistrates responsible for making periodic inspections of prisons; the interview is held without staff members being present (art. 63). In practice, visits of inspection have been accorded to representatives of human rights organizations and the foreign media who have expressed the wish for them.

## Article 12: Liberty of movement and freedom of residence

154. The only restrictions placed on liberty of movement have been in relation to the proclamation of the state of emergency. Article 6 of the relevant decree empowers the Minister of the Interior, for the entire national territory, or the

wali, for his district, to restrict or forbid the movement or gathering of people on the roads and in public places, to set up regulated residential zones for non-residents, and to deny residence to all adults whose actions prove harmful to public order and to the functioning of public services (see paragraphs 35 and 36 and also paragraphs 91 to 94 above).

155. Article 44 of the Constitution of 28 November 1996 has laid it down that an Algerian citizen has the right to choose his place of residence freely and to travel within the national territory.

**Article 13: Rights of aliens**

156. Article 13 of Ordinance No. 66-211 relating to the situation of aliens in Algeria states that an alien has the right "to reside and travel freely within Algerian territory". Aliens whose situation was irregular were expelled from Algeria between 1992 and 1995; they were individuals who had crossed the frontiers without travel documents or valid visas. No deportation measures were carried out on refugees or stateless persons.

**Article 14: Right to justice**

157. Article 151 of the Constitution provides that "the right of defence is recognized and is guaranteed in criminal cases". This guarantee is applicable to all stages of the procedure. On that basis, every accused person has the right to be present at his trial and to defend himself or to have the assistance of a lawyer. That is, however, a recognized "right" of the accused and not a sine qua non for the holding of the trial. Many trials have been conducted in absentia since the emergence of the terrorist phenomenon. Many persons have been convictioned in absentia, but such convictions are not final. Once the person concerned has been detained, or has given himself up, he may apply for the sentence to be set aside. The case is then retried (article 326 of the Code of Criminal Procedure).

**Article 15: Non-retroactivity of penal legislation**

158. The non-retroactivity of penal legislation is a constitutional principle.

**Article 17: Protection against arbitrary or illegal interference**

159. This protection is guaranteed by the Constitution, which regards "the private life and honour of the citizen" as being "inviolable and protected by law" and guarantees "the secrecy of private correspondence and communication". Moreover, the only exception adopted in the context of the struggle against terrorism and subversion has been to empower an officer responsible for executing a search warrant issued by a judge, but also by the Ministry of the Interior or by the wali, to enforce it "by day, but also by night".

**Article 18: Freedom of thought, conscience and religion**

160. Article 160/3 of the Penal Code provides penalties for those who deface, destroy or profane any "places of worship" whatsoever, and article 160/4 provides penalties for those who mutilate, destroy or defile "monuments, statues, pictures or other objects that may be used for the purposes of

religious worship". Likewise, article 77 of the Act of 3 April 1990 on information provides penalties for "anyone who, in writing, or by sounds, images, drawings or any other direct or indirect means, offends against Islam and the other celestial religions".

161. The freedom of conscience guaranteed by the Constitution and the law has been a favourite target for terrorist criminal activity. The law does not make any provision for an "offence" of apostasy, nor does it sanction change of religion, but since the advent of the terrorist phenomenon there has been an increase in infringements of the right freely to practice a religion and against freedom of conscience; those attacks have taken various forms, ranging from verbal abuse to attacks on life.

162. Despite the protection provided by the police, several ministers of the the Moslem religion have been asassinated because they refused to propound integrist theses; that was also what happened to representatives of Christian faiths accused of being the instruments of a "crusade for the evangelization of the country". For a short time, integrist militants even set up "vice squads" in some rural and urban areas to combat individuals whose ideas or behaviour did not comply with the "standards" that they had set under the influence of fundamentalist theoreticians.

**Article 19: Freedom of expression, opinion and information**

163. Articles 35 and 40 of Act No. 90-07 of 3 April 1990 on the Information Code give journalists "the right of access to sources of information" and "the right to reject any editorial order other than one coming from the persons in charge of the editorial staff", but require them "to show full respect for professional and general ethics", in particular by "making every effort to provide full and objective information, to rectify any information that proves to be inaccurate, to refrain from any advocacy of racism, intolerance and violence".

164. The publication of any periodical is free and is subject, for the purposes of registration and verification of accuracy, only to an advance declaration made 30 days before the appearance of the first issue. Publications must not contain any advertisement or announcement likely to promote violence or crime, and there is recognition of the right, where appropriate, of "institutions, agencies or approved associations responsible for the promotion of human rights and the protection of children to bring criminal indemnity actions" (art. 27).

165. In accordance with Decree No. 93/320 of 11 August 1992 on the state of emergency "suspension of activity or closure for a period not exceeding six months may be ordered against any society, organ, establishment or enterprise, whatever its nature or purposes, when the said activities endanger public order, the normal functioning of institutions or the higher interests of the country". It was on that basis that three publications of the dissolved Islamic Salvation Front were banned for threatening public safety. There is no appeal against these suspension measures and they cannot be renewed.

166. Relations between organs of the press and the authorities have been difficult since the introduction of the state of emergency. The measures taken by the authorities to protect journalists, who were favourite targets of

terrorist groups, were deemed to be inadequate - immediately after every attack (more than 60 journalists and other information media professionals have been assassinated by terrorist groups since 1992, and these assassinations were described in 1993 by a leader of the dissolved FIS living in exile abroad as "the carrying out of sentences"), or as excessive - hampering the freedom of movement of journalists. Furthermore, lack of experience and competition between newspapers result in many of them falling into the practices condemned by article 40 of the Information Code. Under the cloak of freedom of expression, several publications give space to declarations or attitudes judged to be defamatory or insulting towards individuals, established bodies or the symbols of the Nation. It may be pointed out here that the Penal Code provides penalties for defamation, which it defines as "any allegation or imputation likely to be prejudicial to the honour or an individual or a body" (art. 296) and insult, which it defines as "any offensive expression, term of contempt or invective" (art. 297). In a reference to these excesses at a press conference held in July 1992, the Head of the Government "warned against the derailing of the exercise of public, individual and collective freedoms", emphasizing the idea that "the use of these freedoms must be accompanied by a sense of responsibility, especially during a period when the country is living through a crisis without precedent since its independence". At the present time the right of information is being exercised in a freedom that is no longer restricted by the legislation on the state of emergency.

167. During the electoral campaign for the legislative elections of 5 June 1997 the Head of the Government announced his intention of proposing a complete overall of the Information Code in force. It was with that in view that the Minister responsible for the information sector undertook a series of consultations with information professionals so as to find out their concerns and their opinions.

**Article 20: The prohibition of propaganda for war and of advocacy of hatred**

168. Three journalists working for the daily paper El Khabar were questioned in January 1992 for having published as an advertisement "a call for disobedience and sedition" launched by the dissolved FIS. Coming at a time when the atmosphere was tense, this invitation, which "threatened the security of the State", was interpreted as a call for civil war.

169. The director and an editorial worker of the weekly Echourouq al Arabi were arrested for a similar reason in June 1992 and held for 22 days for having published a pamphlet that licentiously insulted "the French-speaking minority that governs the country". This measure should be seen in the context of the actions of the authorities to block the intrigues of a political movement that was trying to create a split between those in official executive positions who had been educated in Arabic and those whose language of tuition had been different. Such a perspective would, in effect, have been disastrous, not only for the survival of the machinery of State, but also for the unity of the country.

170. Without being in itself advocacy of hatred, the information given on 26 July 1992 by the daily paper La Nation, which reported the arrest of the Tuareg spiritual leader, was deemed by the authorities to "have had a trouble-making effect prejudicial to civil peace on the population in the South of the

country. Consequently, the publication of this false information arises from a real attempt at destabilization and is an attack on national unity". At the request of the Government, the public prosecutor suspended the authorization for the publication of the aforesaid newspaper.

171. On the obligations of citizens, it may be recalled that the Constitution says that "every citizen has the duty to respect the Constitution and laws of the Republic" (article 60, paragraph 2), and "every citizen must loyally discharge his obligations towards the community" (article 62).

**Article 21: Right of peaceful assembly**

172. The right of peaceful assembly is recognized in Algeria pursuant to article 41 of the revised Constitution, according to which "the freedoms of expression, association and assembly are guaranteed to the citizen". The arrangements for the exercise of these freedoms are set forth in Act No. 89-28 of 31 December 1989 on public meetings and demonstrations. The text of the Act (arts. 2 to 20) indicates that Algerian legislation has established a flexible procedure for the exercise of this right, for which the only requirement is that notice must be given in advance (three days for a meeting, five days for a demonstration). Act No.91-19 of 2 December 1991 increased the period of advance notice to eight clear days for the organization of public meetings, which had henceforward to be authorized by the wali. Any demonstration going ahead without authorization or after having been forbidden is regarded as a mob that the Minister of the Interior or the wali in his district are empowered to disperse.

**Article 22: Freedom of association**

173. Under the terms of articles 32 to 38 of Act No. 90-31 on associations, an association may not be suspended or dissolved other than through judicial channels, at the request of the public authority or on a complaint from a third party. It was on that basis that the administrative chamber of the Court of Algiers, ruling on a procedure initiated by the Ministry of the Interior, ordered the dissolution of the Islamic Salvation Front on 4 March 1992 for "numerous violations of the law". Following appeal, the decision was confirmed by the Supreme Court on 29 April of the same year. The main complaint made against this movement was its call for and its conduct of an "insurrectionary strike" that took place in June 1991, and cost the lives of 95 people, injuries to 438 others, and destruction of the premises of 16 economic organizations.

**Article 25: Right to take part in the conduct of public affairs, to vote and to be elected**

174. The right to take part in the conduct of public affairs is guaranteed by the revised Constitution (arts. 6, 7, 10 and 11) and by the law establishing the democratic and multi-party nature of the Algerian political system. "Every citizen meeting the legal requirements" shall be "a voter and eligible to be elected" (article 50 of the Constitution).

175. The new enabling legislation on the electoral arrangements (Act No. 97-07 of 6 March 1997) lays down certain general rules for elections:

(a) All Algerian men and women aged 18 or over are eligible to vote (article 5);

(b) Voting is personal and by secret ballot (articles 2 and 35);

(c) Persons who are at least 25 years old are eligible to stand as candidates for the local assemblies, and the lower age limit is 28 years for the National Assembly and 40 years for the Council of the Nation and the Presidency of the Republic. The President of the Republic is eligible to stand for re-election only once;

(d) Electoral campaigns are financed from resources derived from the contribution of the parties, the income of the candidate and public aid. Equal access to office and employment under the State is guaranteed to all citizens (article 51 of the Constitution).

**Article 26: Equality before the law**

176. Since its independence Algeria has repealed and revoked all discriminatory legislation and regulations inherited from the colonial period. The principle is established that all citizens have equal rights and obligations and equally enjoy the protection of the law (article 29 of the Constitution). The legislation, which largely takes into account the provisions of international agreements, is inspired by this principle of non-discrimination.

**Article 27: Rights of minorities**

177. Since Algeria became independent in 1962, the population census has ceased to be based on ethnic, religious and linguistic criteria. The explanation for this practice is to be found in the historical process, which led through interpenetration, assimilation and intermixing between the successive inputs of exogenous populations to the formation of a three-dimensional personality: Amazighe, Arab and Moslem.

178. Any classification of the population of the country in terms of ethnic, religious and linguistic criteria now smacks of the unacceptable. That does not mean that the Algerian personality has been diminished by some process of cultural trend towards uniformity - the richness and diversity of its specific characteristics are evidence to the contrary - but simply that the criteria for the distinguishing of a minority among the present population of Algeria are far from convincing. Applying the principle of "divide and rule", the colonial authorities tried to categorize the Algerian population on the basis of certain criteria, in particular colour and language, but the artificial nature of that categorization is shown by the spontaneity and unanimity that characterized popular resistance to colonialism and the launching of the war of liberation.

179. That is why the first paragraph of the revised Constitution states that "Algeria is one and indivisible". Articles 2 and 3 stipulate that Islam is the State religion and Arabic is the national language. In addition to its preamble, other provisions of the Constitution show that Algeria also has an Amazighe, African and Mediterranean identity. Some of the other provisions guarantee freedom of conscience, opinion, intellectual and scientific

creativity, expression, association and assembly, as well as the other fundamental freedoms and human rights, all of which are guaranteed to all Algerians without any discrimination.

180. Algeria, which has had to carry out a complex process of political emancipation, economic liberation and cultural recovery under difficult conditions since submitting its initial report in 1991, is assessing the extent of the challenges that it is still facing.